

1 THE CLERK: Everybody, if you-all dial in the same
2 number at 5 o'clock we'll be on the line.

3 MR. HAAS: Thank you, Your Honor.

4 THE REPORTER: Okay.

5 THE COURT: Thank you.

6 (A recess was taken 4:25 p.m. to 5:08 p.m.)

7 THE CLERK: Do we have everybody on the line from
8 the DOJ, US Attorney's Office?

9 MR. HAAS: This is Alexander Haas from the
10 Department of Justice.

11 MS. WYER: Kathryn Wyer from DOJ is here.

12 MR. BUBAR: Dan Bubar from the US Attorney's Office.

13 MS. ROTTENBORN: Laura Rottenborn, USAO.

14 THE COURT: All right. This is Judge Moon. First I
15 want to thank counsel for your arguments today and for
16 appearing on very short notice.

17 This matter is before the Court on the plaintiffs'
18 motion for a temporary restraining order. Plaintiffs are the
19 one seeking the emergency relief from the Court, and they have
20 to meet the standard articulated by the Supreme Court in
21 *Winter v. Natural Resources Defense Counsel* applicable to
22 motions for preliminary injunctions and TROs.

23 Plaintiffs must show, one, a likelihood of success
24 on the merits that plaintiffs are likely to suffer irreparable
25 harm absent the TRO, the balance of equity is tipped in

1 favor -- plaintiffs' favor, and that issuing the TRO is in the
2 public interest.

3 I've considered plaintiffs' filings today and the
4 argument of counsel. Plaintiffs filed this action and their
5 request for a TRO and dozens of exhibits at 1 o'clock today.
6 The Court heard argument in the case from 3:30 to 4:30. At 5
7 o'clock -- or at 5:06 or 7 now, I think -- the Court is
8 rendering this oral decision.

9 Given the urgent time considerations plaintiffs have
10 described that Baby L would be put on the plane today from
11 [REDACTED] Eastern Standard Time tonight, after
12 consideration of the governing law, arguments, and
13 submissions, I will deny plaintiffs' request for a temporary
14 restraining order. I do not find that plaintiffs have
15 established a likelihood of success on the merits, and, also,
16 I find that the balance of equities do not tip -- as I said,
17 do not tip in favor of the plaintiff, or that the TRO is
18 necessarily in the public interest.

19 Plaintiffs' asserted rights to care for Baby L arise
20 from two [REDACTED] court orders from the Juvenile and Domestic
21 Relations Court of [REDACTED] and the [REDACTED] Circuit Court.
22 But as the government has articulated, these [REDACTED] court
23 orders by their express terms reflect an assumption that the
24 government of [REDACTED] will issue a
25 waiver of jurisdiction. The order from the [REDACTED] Juvenile

1 and Domestic Relations Court states, quote: Evidence was
2 provided that [REDACTED] through the [REDACTED] after
3 after consultation with the [REDACTED]
4 [REDACTED] has indicated that it will
5 issue a medical/responsibility/jurisdiction waiver to consent
6 to the US acting in the best interest of the child as a
7 refugee requesting asylum. The written copy of the waiver is
8 to be provided in a matter of days.

9 [REDACTED] has not issued any waiver of
10 jurisdiction. Instead, as Counsel for the government has
11 asserted today, [REDACTED] is expressly requesting that Baby
12 L be returned under [REDACTED] authority and care.

13 The government has also asserted that as custodian
14 of Baby L Department of Defense should have been formally
15 served with and provided notice of the proceedings in [REDACTED]
16 County Circuit Court. That was not done.

17 The [REDACTED] orders were foundational to plaintiffs'
18 asserted authority to care for Baby L. Given the plain terms
19 of the [REDACTED] court orders and the lack of service and
20 notice upon DoD, I find that plaintiffs have not met their
21 burden of establishing a likelihood of success on the merits.

22 Plaintiffs' likelihood of success on the merits is
23 further diminished by their failure to proceed through proper
24 channels. As the government articulated, plaintiffs' counsel
25 had two alternative avenues to pursuing this 11th hour TRO.

1 First, they should have obtained the consent of the
2 [REDACTED] government to the transfer of Baby L. While
3 plaintiffs' counsel conceded both that it was required and
4 they sought it, it ultimately was not obtained.

5 Second, plaintiffs' counsel also submitted an
6 application for a Visa for this child to enter the US, which,
7 again, plaintiff conceded was not granted.

8 Plaintiffs' failure to succeed under the two avenues
9 demonstrate there's no legal basis to bring Baby L to the
10 United States.

11 Lastly, I cannot overlook the international
12 ramifications of the Court granting the request for temporary
13 restraining order. The State Department has ably articulated
14 the US government's foreign policy interest and has argued
15 relations with [REDACTED] are significantly implicated by
16 this case.

17 Plaintiffs' counsel suggested that if only the State
18 Department would, quote, get out of the way, end of quote,
19 everything would proceed in an orderly fashion and [REDACTED]
20 would respect human rights law. But it is the role of the
21 State Department and not private litigants or the Court to
22 determine the foreign policy interest of the United States.

23 For these reasons, I deny plaintiffs' motion for a
24 TRO.

25 And that's the decision. And anything else?

1 MR. HAAS: Nothing from United States, Your Honor.
2 Thank you very much.

3 (Interruption by court reporter.)

4 MR. MAST: Clarification is that it was a DoD
5 initiated parole Visa. We did not initiate the Visa.

6 THE COURT: Okay. With that correction then, we'll
7 adjourn. Thank you all.

8 COUNSEL: Thank you, Your Honor.

9 (The proceedings concluded at 5:15 p.m.)

10 **CERTIFICATE**

11 I, Mary J. Butenschoen, certify that the foregoing
12 is a correct transcript from the record of proceedings in the
13 above-entitled matter.

14 /S/ Mary J. Butenschoen, RPR, CRR

3/14/2020

15
16
17
18
19
20
21
22
23
24
25